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SUBJECT: UN SECRETARIAT OUTLINES STEPS TO ESTABLISH HARIRI
TRIBUNAL

REF: USUN 243

1. (SBU) Summary. During a meeting with Department lawyers and USUN Political and Legal officers on June 9, UN Office of Legal Affairs (OLA) lawyer Mark Quarterman and Department of Political Affairs (DPA) officer Alma Saliu said they believed they had reached agreement with Lebanese judges Choucri Sadr and Ralph Riachy on the remaining steps to establish a tribunal to try those responsible for the assassination of Rafiq Hariri. Relaying Lebanese concerns that the timetable for establishing the tribunal not slip further, U.S. and French representatives strongly pressed the Secretariat to schedule a visit to Beirut by the end of June to finalize the agreement. OLA staff indicated they planned to finalize the text by early July but took note of P-3 concerns on timing. The Lebanese and the French separately argued that the tribunal should have discretion to try other crimes linked to the Hariri assassination, but OLA said it had not yet decided how to address the question of jurisdiction. The Lebanese judges disclosed that constitutional court review of the UN-GOL agreement might become a stumbling block to Lebanese ratification. End Summary.

Next Steps to Establish Tribunal

2. (SBU) Quarterman said the Lebanese judges seemed satisfied with OLA's outline of the remaining steps necessary to establish the tribunal. After the UN and GOL reach agreement in principle on the treaty and the SYG presents the text to the Council with an accompanying report explaining its contents, he observed that the UNSC could request changes to the text through an exchange of letters with the SYG. Once the UNSC is satisfied with the agreement, Quarterman suggested, the SYG could sign it on behalf of the UN. The GOL could then sign the agreement and forward it to the Lebanese Parliament for ratification. In the case of Sierra Leone, after the Secretariat made the changes requested by UNSC members and the exchange of letters ceased, the SYG went forward and signed the agreement (he added this process took two months). No additional UNSC authorization was needed in that case for the SYG to act, but Quarterman said OLA had not discussed this point in depth with the Lebanese.

3. (SBU) Relaying Lebanese concerns that the current timetable for the draft agreement not slip beyond the current rough timetable, U.S. and French experts strongly pressed the Secretariat to quickly finish the draft treaty and statute

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necessary to establish the tribunal and urged OLA to honor its prior commitment to visit Beirut by the end of June. The French experts expressed hope that they would be able to begin UNSC consultations on the draft text when they assume the Presidency of the UNSC in July. Quarterman said OLA hoped to have a draft agreement ready by the end of June that

could then be finalized in Beirut in early July, but he noted U.S. and French insistence on a quicker timeframe and promised to convey those views to U/SYG and Legal Counsel Nicolas Michel.

14. (SBU) Quarterman noted that while a prosecutor's office will be created as soon as the agreement enters into force, it will not be able to effectively carry out its work until the remaining elements of the court, including a pre-trial chamber, have been established. The tribunal will need to organize its finances and hire judges before it can begin legal proceedings -- including whether to continue to detain the four Lebanese generals currently incarcerated on suspicion of involvement in Hariri's killing. Speculating that the Lebanese want the prosecutor in place quickly to relieve them of responsibility over the four generals, Quarterman opined privately that the GOL would have to resolve the status of the generals before the tribunal begins operating -- especially given that generals have already been in jail for almost one year without charge.

Jurisdiction

15. (SBU) Despite their earlier preference that the tribunal focus on Hariri alone (reftel), the Lebanese judges told the U.S. delegation on June 2 that they want the scope of the tribunal's competence to be broad enough to hear cases of additional assassinations committed from October 2004 to the end of December 2005 if the prosecutor finds that these cases are "linked" to the Hariri assassination. The judges argued that broader jurisdiction would not delay moving forward with the Hariri case. They said they expect the draft agreement to provide jurisdiction to the tribunal for all terrorist acts in Lebanon between October 2004 and December 2005, leaving to the court to determine whether the cases are

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linked to Hariri.

16. (SBU) Quarterman told P-3 experts on June 9 that OLA was still considering different options to address the extent of the tribunal's jurisdiction over crimes other than the Hariri assassination. Recalling UNSCR 1644's request that the SYG recommend to the Council whether to expand the mandate of UNIIIC to cover these other attacks, Quarterman argued that if the Commission's mandate were expanded it would be odd for the tribunal not to have the same jurisdiction. At the same time, he noted that 13 out of 15 UNSC members had argued during recent Council consultations that the tribunal should have limited jurisdiction.

17. (SBU) The French expert said France would support expanding the mandate of the Commission if Brammertz decides there are links between the Hariri killing and other attacks.

He urged OLA to release the SYG's report on whether to expand UNIIIC's mandate as soon as possible, but certainly before the SYG's report on the agreement to establish the tribunal. U.S. experts noted on June 9 that the U.S. position would be informed by reports by Brammertz but that resource implications for the tribunal would also have to be considered.

Funding

18. (SBU) Quarterman confirmed that the source of the tribunal's funding does not need to be resolved in the UN-GOL agreement, but he emphasized the importance of this question because the tribunal will not have access to funds from UN assessed contributions. Drawing on the Sierra Leone example, Quarterman predicted the SYG would want the tribunal to have pledges sufficient for one year of operations before it is established. He added that the prosecutor will likely want substantial investigative capabilities after the tribunal is established to re-interview some of the witnesses deposed by

the UNIIIC and re-examine some of the evidence, so the first year of the tribunal's operations will likely be quite costly. He acknowledged, however, that the Lebanese judges had assured him that funding would not be an issue for the tribunal.

Amnesty and Pardon

¶9. (SBU) Disclosing a possible stumbling block to swift Parliamentary ratification, the Lebanese judges told Department lawyers and USUN staff on June 2 that the Constitution gives all Lebanese the right to petition for amnesty or pardon except when they are convicted of international crimes. (Comment: A subsequent review of the Constitution revealed no such position; the judges might have been referring to a provision of the Penal Code and not the Constitution. End comment.) If ten members of Parliament question whether the agreement satisfies the Constitutional protections, the judges said, they have a certain period of time in which to refer the issue to the Constitutional Court (which is not now constituted). They added that the Constitutional Court could decide to strike down certain provisions of the agreement, such as those pertaining to amnesty and pardon, and allow the rest of the agreement to stand. Quarterman agreed on June 9 that review by the constitutional court of the UN-GOL agreement could pose problems, but he said the Lebanese had promised to find a way to resolve this issue.

Comment

¶10. (SBU) We would welcome Embassy Beirut,s views on whether the Lebanese Government shares OLA,s outline of the remaining steps necessary to establish the tribunal.
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